

penalty of \$10,000 per violation for a total penalty of \$1,000,000. After reviewing the record of this case, including the briefs of the parties filed before me, I approve the ALJ's recommended findings and decision subject to my comments below.

I approve the ALJ's findings of fact and his conclusions of law. The ALJ correctly found that the former EAR § 787.5(a) (15 CFR 787.5(a)) does not require a showing of knowledge on intent on the part of the respondent. The ALJ correctly determined that ALCOA committed 100 violations of the EAR.

With respect to the penalty, I generally agree with the ALJ's assessment of the factors that bear on the penalty. The ALJ is correct, for example, that the results in prior settlement cases are not precedent for a penalty in this contested case. A willingness to settle on the government's terms is a concrete sign that a violator has admitted his wrongdoing and is making amends. That factor, which is not present in this case, can significantly mitigate the penalty. I also disagree with respondent's counsel that the result in this case will have a chilling effect on voluntary disclosures. ALCOA did not make a voluntary disclosure under the meaning of EAR 764.5 in this case. This penalty should send the message that there are significant advantages to having an internal compliance program that catches and reports problems quickly.

I have made my own assessment of the penalty in light of the findings and conclusions of the ALJ. I approve the ALJ's recommended penalty of \$10,000 for each of the 50 § 787.6 violations for exporting without the required validated export license. With respect to the penalty for the false statement violations under § 787.5(a), however, I am reducing the penalty to \$5,000 per violation. Accordingly, I approve a total penalty of \$750,000.

It is therefore ordered that the Aluminum Company of America, having been found by a preponderance of the evidence to have committed 100 violations of the Export Administration Regulations, pay a civil penalty in the amount of \$10,000 for each of the 50 charges of violation of former § 787.6 of the EAR and a civil penalty of \$5,000 for each of 50 charges of violation of former 787.5(a) of the EAR, for a total penalty of \$750,000.

It is further ordered that ALCOA shall pay the penalty assessed herein within 30 days from the date of this order and in accordance with the "instructions for Payment of Civil Penalty" attached to

the ALJ's recommended decision and order. Pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this order accrues interest as more fully described in the attached notice, and, if payment is not made by the due date specified herein, respondent will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached notice.

It is further ordered that this decision and order and the recommended decision and order of the ALJ shall be served on the parties and published in the **Federal Register**.

Entered this 19th day of February, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, the respondent may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), and the Federal Claims Collection Standards (4 CFR parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 CFR 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 CFR 102.13.

The foregoing constitutes the initial written notice and demand to respondent in accordance with section

102.2(b) of the Federal Claims Collection Standards (4 CFR 102.2(b)).

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on March 11, 1999, 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks.
2. Discussion of the Biological Weapons Convention (BWC) implementation protocol.
3. Discussion of 01/19/99 BWC Ad Hoc Group Working Paper.
4. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3886C, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

For more information contact Lee Ann Carpenter on (202) 482-2583.

Dated: February 19, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

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